

REMARKS

Applicant respectfully traverses the rejection of claim 7 for at least two reasons: First, the cited reference, Foreman U.S. Patent 4,816,025 neither anticipates nor renders obvious, either alone or in combination, the subject matter claimed as the invention. Second, Applicant's invention predates the effective date of Foreman. In that regard, Applicant submits herewith her declaration of prior invention, pursuant to 37 CFR §1.131.

I.

Claim 7 Is Not Anticipated

Foreman '025 certainly does not anticipate claim 7 of the present application. Among other things, claim 7 requires "a soft padding member located along at least one of said waistband portions, being adjacent to said plastic layer edge..." Claim 7 further requires that the soft padding member include "a material formed from a soft substance."

The Foreman patent concerns exudate guards. The title of a patent refers to the article having a "containment pocket." This containment pocket is formed by various barrier cuffs 62 and 262. Barrier cuffs 62 extend parallel to the major axis of the diaper, that is, lengthwise; while second barrier cuffs 262 extend parallel to the waistband. Fig. 2 of the patent shows a cross section of first barrier cuffs 62, and Fig. 3 shows a cross section of the second barrier cuffs 262. Since claim 7 of the present application refers to padding located along at least one of the waistband portions, the first barrier cuffs of Foreman cannot respond to the claim language. Instead, consideration can be given to second barrier cuffs 262.

A second barrier cuff 262 is formed by adding a structure beginning at the edge 32 of the diaper. With reference to Fig. 3, the second barrier cuff is secured to the outer ply of the diaper via attachment means 88. Proceeding to the left about 0.5 inch, a further attachment means 92 is shown. At that point, a topsheet 38 or 40 begins, and an absorbent core 44 having an absorbent layer 48 is interposed between the topsheet 38 and the backsheet 42. Meanwhile, the barrier cuff meets the topsheet only at attachment means 92, according to Fig. 3. To the left of point 92, the barrier cuff is freely projecting, extending upward, beginning at second proximal edge 264 and extending to a distal attachment means 93 which marks a tunnel (unnumbered), the outer edge of which is called a "second distal edge" 266 in the Foreman patent.

The function of this structure is to permit exudates from the diaper-wearer to be trapped in the diaper. The second distal edge 266 is intended to cling to the body of the wearer, just as the distal edge 66 of the first barrier cuff 62 is to cling to those portions of the body with which it comes into contact. Thereby, these barrier cuffs form a pocket so that exudate does not escape around the waist or leg openings of the diaper. Fig. 2 and 3 both show a channel 96 extending between the barrier cuff and the core 44 of the diaper.

The second barrier cuff 262 is clearly not a soft padding member as claimed in claim 7. To the extent that the patent makes reference to a soft edge 266, this is merely because the end of the barrier cuff is looped back upon itself to form the tunnel. The flap that is in the waist region is not said to include any soft padding material, applicant respectfully submits.

Consequently, the rejection under Section 102 is traversed on its substance.

Claim 7 Is Not Obvious

The Examiner apparently has appreciated that the barrier cuff of Foreman is not a "soft padding member" and therefore set forth in a further rejection under Section 103. The Examiner rejects claim 7 as obvious over Foreman in view of Lindquist U.S. Patent 3,572,342. Said rejection is also respectfully traversed.

The Examiner refers to Linquist's padding elements 37 and 38 made of foam, applied along part of the diaper. Lindquist is concerned with stopping the leakage of diapers, particularly in active wearers. Lindquist places resilient hydrophobic strips made of a polymer foam at certain strategic locations on the diaper to prevent movement of fluids beyond the strip. Col. 2, lines 28-31 refer to flexible resilient hydrophobic strips 16 and 17 formed of a soft, easily compressible resilient material. The relevant text begins at Col. 5, lines 7, and the passage mentions that the diapers contain sealing strips 37, 38 which extend laterally across the diaper. The citation mentions the problem of an infant lying on its back where the whole back area covered by the diaper becomes wet. The sealing strips of Lindquist extending laterally across the diaper are said to confine the wet area, thereby permitting only part of the diaper to become wet, allowing another part to remain dry.

However, Applicant does not find any disclosure in Lindquist of using such strips adjacent the actual waist edge, or using these strips for softening the effect of an edge of a

diaper. No disclosure nor suggestion discusses this problem. Consequently, the combination of Foreman with Lindquist fails to meet the limitations of the claim, and moreover, appears to be pure hindsight reconstruction. Consequently, Applicant respectfully traverses the Section 103 rejection of Foreman in view of Lindquist, on its merits.

Applicant reminds the Examiner of the decision by the Board in the parent case on this point: "Thus it is evident that the Examiner has resorted [to] speculation, unfounded assumptions and/or hindsight reconstruction to supply the acknowledged deficiency in the prior art basis for the appealed rejection."

The Section 101 Rejection Will Be Overcome

With regard to the rejection under Section 101, based on double patenting-obviousness type, Applicant offers to file a terminal disclaimer when patentable subject matter is acknowledged by the PTO. Applicant notes in passing that paragraph 8 of the Office Action states "...the conflicting claims have not yet been patented." Applicant calls attention to Applicant's U.S. Patent 5,979,824, which issued on August 25, 1998 upon her Serial No. 92,540. Accordingly, Applicant cannot add claims in her Serial No. 92,540 since it has already passed to issuance.

II.

Applicant denies that Foreman is available as a reference against her. On its face, Foreman states that it is a continuation of Serial No. 917,475 filed October 10, 1986. In the

accompanying declaration, Applicant refers to her disclosure document that was filed with the PTO on March 13, 1987, and which received Disclosure Document No. 166,418. Although the PTO filing date thereof is subsequent to Foreman's October 10, 1986 parent application date, Applicant's disclosure document reflects conception at least as early as September 2, 1986. Moreover, applicant indicates in her declaration that she possessed an actual reduction to practice by October 3, 1986.

Consequently, Applicant requests that the Examiner rule that Foreman does not prevent Applicant from obtaining a patent for her invention.

III.

Applicant is adding a small number of new claims. With regard thereto, no fee is necessary since they are covered by the original basic application fee.

An additional indication of the non-obviousness of the instant invention is the tremendous commercial success of the Tracy invention, which has been adopted by a major segment of the disposable diaper industry.

Specifically, numerous diapers are being sold today with a strip of foam added at the waistband, positioned between an outer plastic layer and the skin of the infant or child. Such diapers have a soft padding member located along the waistband portions, adjacent to the plastic layer edge. The soft padding members are distinct from all of the body portion layer, and the

padding members include a material formed from a soft substance. The soft substance is located between the diaper wearer and the plastic layer edge, and the diaper presents a soft surface at the inside of the diaper waistband portion despite the plastic layer edge. The other aspects of claim 7 are plainly met, being minimal recitations of a disposable diaper construction. Diapers according to this construction are made by such companies as Drypers, Kendall Confab, Kimberly Clark, and Paragon Trade Brands.

For the foregoing reasons, Applicant respectfully requests the PTO to withdraw the rejections and send a Notice of Allowability.

With regard to the drawings, a new set of formal drawings will be provided at a later date.

To the extent that any additional fee is due, it may be charged to our Deposit Account 03-3135. However, no fee is believed to be due.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,



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Enclosed: Tracy declaration